

Docket No.: 00-4064
(PATENT)**REMARKS**

Claims 1, 3, 6-10 and 12-35 are pending. In the Office Action, claims 1-17¹ and 34 were rejected under 35 U.S.C. § 102(b) as anticipated by US 5,812,638 to Muller ("Muller"). Further, claims 1-9, 28-30, and 34-35 were rejected under 35 U.S.C. § 103(a) as obvious over Muller in view of US 6,263,066 ("Shtivelman"). Further, claims 18-27 and 31-33 were rejected under 35 U.S.C. § 103(a) as obvious over Muller in view of US 5,991,390 ("Booton").

Claims 10 and 18 are amended, and claim 11 is canceled without prejudice or disclaimer, by way of this response. The amendments to claims 10 and 18 have been made solely for the purpose of further clarifying the meaning of the claim language, and no alteration of the scope of the claims is intended thereby. In light of the foregoing amendments and the following remarks, Applicants respectfully submit that all pending claims are in condition for allowance.

I. SECTION 102 REJECTIONS**A. Claims 1, 9, and 34: "unique call identifier"**

Independent claims 1, 9, and 34 were each rejected under Section 102 as anticipated by Muller. These claims each recite, among other limitations, "*assigning a unique call identifier to the incoming call.*" However, Muller does not teach or suggest assigning a unique call identifier. Rather, Muller teaches at most a system that processes incoming calls in the order received without assigning a unique call identifier. (Col. 5, lines 18-20.)

Muller discloses a telephone queuing system that processes incoming calls to a directory assistance facility. (Figs. 1-3.) Muller's system includes the following elements: a recording system for incoming calls 22, a queuing system 28 for holding calls that cannot be connected immediately to an operator, and a replaying system 42 for replaying the recorded message to the operator. Thus, the system taught by Muller prompts an incoming caller to provide information that is temporarily recorded and stored. (Col. 4, lines 35-61.) Once the information provided by the incoming caller has been recorded and/or stored, the information may be forwarded or communicated to the operator, who will use the information to search for the telephone number of the desired party. (Col. 5, lines 10-14.) During high volume periods, the incoming caller may not be immediately connectable with an operator. (Col. 5, lines 14-16.) Therefore, Muller's queuing system 28 serves as a reservoir that holds

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incoming calls until an operator is available. (Fig. 2; Col. 5, lines 20-22.) The queuing system 28 may be “conventionally implemented in a switch” and does no more than “link the operator . . . to an incoming caller in the queue.” (Col 5, lines 15-27; Figures 1-5)

As is clear from the foregoing description of Muller’s system, Muller, unlike the present invention, requires a first in, first out (FIFO) process. Accordingly, with respect to Muller’s system, there is no need to assign a unique identifier because each incoming call is processed in the order received. (Col. 1, lines Figures 2-5.)

Contrary to the Examiner’s assertion (Office Action, page 3), it is not inherent that a call identifier be associated with the call. As the Federal Circuit has explained, “[i]nherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Scaltech Inc. v. Retec/Tetra L.L.C.*, 51 USPQ2d 1055 (Fed. Cir. 1999). Muller does not expressly teach or suggest *assigning a unique call identifier* to the incoming call. Moreover, because Muller’s queuing system is necessarily a FIFO process, Muller has no need to employ a unique call identifier. Rather, Muller’s system can simply rely on the order in which calls were received.

Accordingly, Applicants respectfully disagree with the Examiner’s position that “the only way to relay both the queued incoming call and the recording to the operator/agent together, at the right time, is to use some identifier to associate the call and the recording.” (Office Action, page 3.) In fact, as explained above, and as Applicants explained in their Remarks filed July 6, 2004, Muller teaches a first-in-first-out (FIFO) system that renders a unique identifier unnecessary. The Examiner has not responded to this argument, but has acknowledged that, “interpreted differently, Muller does not teach assigning a unique call identifier to the incoming call.” (Office Action, page 5.) In light of this acknowledgement, as well as the Examiner’s failure to address the implications of Muller’s teaching of a FIFO system for queuing calls, Applicants respectfully suggest that the Section 102 rejection of claims 1, 9, and 34, as well as of claims 3 and 6-8, should be withdrawn.

B. Claims 1 and 10: “switching device”

Independent claims 1 and 10 were rejected under Section 102 as anticipated by Muller. Claim 1 recites “transferring the incoming call from the voice response device (VRU) *back to the switching device*.” Similarly, claim 10 recites “a voice response device configured to receive the incoming call from the switching device and to route the incoming call to a voice response device” as well as “a voice response device configured to receive the

¹ Applicants note that claims 2 and 4-5 were canceled in their Amendment filed on July 6, 2004.

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incoming call from the switching device, prompt the caller to provide audio input relating to the incoming call, record the audio input, and send the incoming call to the switching device for transmitting to an available one of the service agents." Thus, the present claims clearly require a switching device that sends and receives calls within the inventive system, as well as receives calls from outside of the system. Muller, in contrast, teaches unidirectional processing of incoming calls. (See Figures 2-5.) According to Muller, as set forth above, the incoming call is prompted, recorded, placed in the queuing system 28, and then provided to the operator.

Accordingly, even if the Examiner is correct that "any system that can receive an incoming call has a switching device of some sort that actually receives the call" (Office Action, page 2), it is irrelevant whether Muller teaches such a system because Muller clearly does not teach or suggest the bi-directional communications required by claims 1 and 10. These claims require receiving an incoming call at a switching device, routing the call to the voice response device, storing the audio input in a file associated with the unique call identifier; and transferring the incoming call from the voice response device *back to the switching device*. Thus, there is *bi-directional* communication between the Automated Call Distributor/Private Branch exchange (ACD/PBX) 130 and the Voice Response Unit (VRU) 140. There is no teaching or suggestion that the system disclosed by Muller includes bi-directional communication between the queuing system and the recording system 22.

In fact, Muller teaches away from the bi-directional communication required by claims 1 and 10 in that an object of Muller's invention is to "increase customer satisfaction by reducing operator response time." (Col. 1, lines 43-44.) Incorporating bi-directional communications between Muller's queuing system 28 and recording system 22 would negatively impact the speed at which incoming calls are processed. As such, regardless of whether the examiner is correct that a switching device is inherent in receiving a telephony call (Office Action, page 2), clearly it is not inherent that there be bi-directional communication between the ACD/PBX 130 and the VRU 140.

For at least the foregoing reasons, independent claims 1 and 10 are patentable over Muller. Further, claims 3, 6-8, and 11-17 are patentable at least by reason of their dependence on one of the foregoing independent claims.

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(PATENT)**II. SECTION 103 REJECTIONS****A. Claims 1, 9, 28, 30 and 34: "unique call identifier"**

Independent claims 1, 9, 28, and 30 and 34 were each rejected under Section 103 as obvious over Muller in view of Shtivelman. These claims each recite, among other limitations, "assigning a unique call identifier to the incoming call." The Examiner apparently acknowledges that "Muller does not teach assigning a unique call identifier to the incoming call." (Office Action, page 5.) The Examiner attempts to use Shtivelman to cure Muller's deficiencies even though Shtivelman itself nowhere teaches or suggests assigning a unique call identifier to a call. Accordingly, the Examiner has failed to state a *prima facie* case of obviousness at least because the cited references do not teach each and every recited claim limitation. In addition, the Examiner has failed to provide a motivation in either reference to combine them, and thus has failed to state a *prima facie* case of obviousness for at least this further reason. See MPEP § 2143; *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1444 (Fed. Cir. 1991); *In re Royka*, 490 F.2d 981, 180 USPQ 560, 562 (CCPA 1972).

1. Shtivelman's failure to teach "assigning a unique call identifier to the incoming call"

Shtivelman clearly does not teach or suggest assigning a unique identifier to a call. As the Examiner notes (Office Action, page 5), Shtivelman discloses several methods for prioritizing and queuing calls. However, the Examiner has not shown that any of these methods necessarily requires or suggests assigning a unique identifier to a call. At most, as the portions of Shtivelman cited by the Examiner make clear, Shtivelman teaches no more than associating a multimedia message with the record of a communication. (Shtivelman, col. 9, lines 19-67.) Shtivelman is wholly silent as to how this association is made, and there is absolutely no teaching or suggestion in Shtivelman of assigning unique identifiers to either the multimedia messages or the records of communications, much less to incoming calls.

The Examiner appears to acknowledge that, like Muller, Shtivelman does not teach assigning a unique call identifier to a call. For example, the Examiner explains that Shtivelman teaches "well known queuing methods" such as "priority queuing/queuing according to agents' skills, etc." (Office Action, page 5.) The Examiner continues: "[s]uch well known queuing means queue calls not only in a first-in-first-out basis," and "[t]herefore assigning a unique identifier to the call or using a unique identifier already present in the call such as the ANI or caller ID is inherent." (Office Action, page 5) That is, the Examiner's argument boils down to the reasoning that, because there allegedly were other well known means of queuing besides "first-in-first-out", assigning a unique identifier to a call is inherent

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in the prior art. Applicants respectfully submit that the mere fact that calls are prioritized in some fashion does not require or even suggest assigning a unique identifier to a call. In fact, as already noted above, placing calls in a queue means that a unique identifier is not necessary because calls will be handled out of the queue and not according to any assigned identifier. Thus, Shtivelman actually teaches away from this element of the claims.

Thus, for at least the foregoing independent reason, independent claims 1, 9, 28, and 34 are patentable over the prior art of record. Furthermore, dependent claims 3, 6-8, 11-17, 29, and 35 are similarly patentable.

2. *Lack of motivation to combine Muller and Shtivelman*

The Examiner's stated motivation for combining Muller and Shtivelman is that

the queuing means [disclosed in Shtivelman] are old and well known and qualify as standard queuing means, which are at least contemplated by Muller. Moreover, ACD/call center calls routinely monitor calls for agent performance, store calls for statistical purposes, etc. For many years now, a caller, before being connected to an agent, will hear an announcement indicating that the call may be recorded for . . . various purposes. If no call identifier were assigned to these calls there would be no way to later retrieve these calls. (Office Action, page 5.)

As an initial matter, Applicants note that the Examiner appears to have taken Official Notice as to what queuing methods are old and well known, as well as to the alleged fact that call centers "routinely monitor calls". Accordingly, Applicants seasonably request that the Examiner provide documentary evidence to support the taking of Official Notice as is required by 37 CFR § 1.104(d)(2) and MPEP § 2144.03.

Further, neither Muller nor Shtivelman contains even a suggestion that assigning a unique identifier to an incoming call would be desirable. The Examiner's allegation that "standard queuing means . . . are at least contemplated by Muller" (Office Action, page 5) surely does not rise to the level of a motivation to assign a unique identifier to an incoming call. Similarly, the mere fact that Shtivelman may teach various queuing methods by no means suggests unique identifiers assigned to incoming calls.

Thus, for at least the foregoing second independent reason, independent claims 1, 9, 28, and 34 are patentable over the prior art of record. Furthermore, dependent claims 3, 6-8, 11-17, 29, and 35 are similarly patentable.

B. *Claims 21, 24, 33, and 35: acknowledgement that audio input has been heard*

Dependent claims 21, 24, and 33 were rejected under Section 103 as obvious over Muller in view of Booton. Dependent claim 35 was rejected under Section 103 as obvious

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over Muller in view of Shtivelman. Claims 21 and 24 recite that "the voice response device is further configured to wait for an acknowledgement that indicates that the available service agent has heard the recorded audio input". Claims 33 and 35 similarly recite that "waiting for an acknowledgement that indicates that the available service agent has heard the audio input". The Examiner acknowledges (Office Action, page 6) that Muller does not teach this claim limitation, but rather teaches manipulating the timing of audio input to match the time it takes an agent to process recorded information. The Examiner does not suggest that either Shtivelman or Booton teach waiting for an acknowledgement that indicates that the available service agent has heard the audio input. Further, Muller clearly teaches against Applicants' recited limitation, inasmuch as in Muller's system there would be no reason to wait for an acknowledgement that audio input has been heard.

Moreover, the Examiner has plainly failed to state a *prima facie* case of obviousness with respect to claims 21, 24, 33, and 35, for at least two reasons. First, the Examiner has provided no prior art reference teaching an acknowledgement of audio input before a call is connected. Second, even if the prior art did teach or suggest such a limitation, the Examiner has provided no support in the prior art for any motivation to modify Muller with this limitation. At most, the Examiner contends that Muller provides such motivation because "there would be no purpose in connecting the caller to the operator/agent before they had heard the recorded audio input." Accepting the Examiner's contention *arguendo* as true, the Examiner still has identified no teaching or suggestion in Muller that waiting for an acknowledgement before a call is connected is a desirable way to ensure that a service agent has had the opportunity to hear available input. Further, Muller is incapable of the proposed modification because Muller allows no opportunity for an acknowledgement of audio input.

To the extent that the Examiner believes that support for a *prima facie* case of obviousness with respect to claims 21, 24, 33, and 35 is found in the prior art or is supported by Official Notice, Applicants respectfully request that the Examiner provide documentary evidence of this support in the form of a prior art reference or affidavit pursuant to 37 CFR § 1.104(d)(2) and MPEP § 2144.04.

Accordingly, claims 21, 24, 33, and 35 are in condition for allowance for at least the foregoing reasons.

C. Claims 18 and 23: "switching device"

Independent claims 18 and 23 were rejected under Section 103 as obvious over Muller in view of Booton. Claims 18 and 23 each recite, among other limitations, "a switching device configured to receive an incoming call from a caller." The Examiner relies

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on Muller to meet this claim limitation, and accordingly, the discussion above regarding Muller's failure to read on similar limitations in claims 1 and 10 is fully incorporated herein by reference, and for at least the reasons stated above, claims 18 and 23, as well as claims 19-22 and 24-27, depending therefrom, are in condition for allowance.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If the Examiner believes that a personal interview with Applicants' representative would advance prosecution of this application, the Examiner is invited to telephone the undersigned.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account 07-2347, under Order No. 00-4064 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to the aforementioned account.

Respectfully submitted,

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By


Joel WallAttorney for Applicants
Registration No.: 25,648VERIZON CORPORATE SERVICES
GROUP INC.
c/o Christian Andersen
600 Hidden Ridge Drive,
Mailcode HQE03H14
Irving, TX 75038
972-718-4800
CUSTOMER NO.: 32127